

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL DEPIETRO,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 19-15516 (SDW)(LDW)

**OPINION**

September 28, 2021

**THIS MATTER** having come before this Court upon the filing of the Government's Motion for Judgment on the Pleadings (D.E. 33) pursuant to Federal Rule of Civil Procedure ("Rule") 12(c); and

**WHEREAS** on December 7, 2017, Plaintiff Michael DePietro ("Plaintiff") sent the United States Department of Veterans Affairs ("VA") a notice regarding an administrative tort claim. (D.E. 32-1, Ex. 1.) There, Plaintiff alleged that a VA doctor caused nerve damage to his left cheek during a routine dermatological procedure. (*See generally* D.E. 1.) On March 15, 2018, the VA acknowledged receipt of Plaintiff's claim. (D.E. 32-2, Ex. 2.) On July 30, 2018, the VA denied Plaintiff's claim via letter sent by certified mail. (D.E. 32-2, Ex. 3.) That letter stated that Plaintiff could "seek judicial relief in a Federal district court," but would need to "initiate the suit within six months of the mailing of this notice" in order to do so. (*Id.*); and

**WHEREAS** on July 17, 2019, Plaintiff filed a Complaint alleging tort claims against the East Orange Veteran’s Affairs Hospital (“East Orange”).<sup>1</sup> The Government answered Plaintiff’s Complaint on August 9, 2021. (D.E. 30; *see also* D.E. 32 (Amended Answer).) Pleadings are now closed. (*See* D.E. 33-1 at 8.) On August 27, 2021, the Government filed its Motion for Judgment on the Pleadings, alleging that Plaintiff’s claims were barred by the applicable six-month statute of limitations. (D.E. 33.) On September 22, 2021, Plaintiff opposed. (D.E. 36.) On September 21, 2021, Plaintiff filed an additional letter. (D.E. 37.); and

**WHEREAS** Plaintiff’s tort claims, (*see* D.E. 1), were brought pursuant to the Federal Tort Claims Act’s (“FTCA”) limited waiver of sovereign immunity, (*see* D.E. 33-1 at 4-5). Pursuant to the FTCA, a party must exhaust his or her administrative remedies prior to filing suit against the Government. 28 U.S.C. § 2675; *McNeil v. United States*, 508 U.S. 106, 113 (1993). An FTCA action brought against the Government must meet two limitations periods: (1) a tort claim must be submitted to the federal agency within two years from the date the claim accrues; and (2) a federal court case must be filed within six months from the date the claim is denied. *Sconiers v. United States*, 896 F.3d 595, 597 (3d Cir. 2018); and

**WHEREAS** the doctrine of equitable tolling will, in limited circumstances, excuse failure to adhere to a statute of limitations. That doctrine applies in three circumstances: ““(1) where the defendant has actively misled the plaintiff respecting the plaintiff’s cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.” *Walker*

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<sup>1</sup> As noted by the Government in its Motion for Judgment on the Pleadings, the appropriate Defendant in this case is the United States of America. (D.E. 33 at 2 n.1; D.E. 36-1 at 1); 28 U.S.C. § 2679(a) & (d)(1); *see Hunt v. U.S. Dep’t of Veterans Affs.*, Civ. No. 18-9443, 2019 WL 1236835, at \*2 (D.N.J. Mar. 14, 2019). Therefore, this Court will substitute the United States of America for the named Defendant, East Orange, in the case caption and briefing.

v. United States, 616 F. App'x 497, 500 (3d Cir. 2015) (quoting *Santos ex rel. Beato v. United States*, 559 F.3d 189, 197 (3d Cir. 2009)); and

**WHEREAS** although Plaintiff sent his tort claim to the Government in accordance with the FTCA, he failed to file suit within six months of the VA's denial. (D.E. 33-1 at 5-6); 28 U.S.C. § 2401(b). The VA's letter to Plaintiff clearly articulated the applicable six-month limitations period. (D.E. 32-3, Ex. 3.) Plaintiff has failed to present any legal basis for applying the doctrine of equitable tolling in his opposition. (D.E. 36; D.E. 37);

Accordingly, for the reasons set forth above, the Government's Motion for Judgment on the Pleadings is **GRANTED**. An appropriate order follows.

**WIGENTON**, District Judge.

s/ Susan D. Wigenton  
**SUSAN D. WIGENTON**  
**UNITED STATES DISTRICT JUDGE**

Orig: Clerk  
cc: Parties